

**Before the State of South Carolina
Department of Insurance**

In the matter of:

Charles R. Potthast,

27925 Summer Place Drive
Wesley Chapel, Florida 33543.

SCDOI File Number 2001-110852

**Default Order Revoking
Nonresident Insurance Agent's License**

This matter comes before me pursuant to a Letter of Allegation and Notice of Opportunity for Public Hearing served, as required within S.C. Code Ann. § 38-3-170 (Supp. 2001), by the State of South Carolina Department of Insurance upon Charles R. Potthast, by both certified mail, return receipt requested, and by regular mail on March 28, 2002.

By that letter, Potthast was informed of his right to request a public hearing upon the allegations of impropriety contained within the letter against him. Further, he was warned that his failure to make a timely, written request would result in my summary revocation of his license to do business as a nonresident insurance agent within the State of South Carolina. Potthast has failed to respond to the Department's letter. On May 22, 2002, therefore, counsel for the Department filed an Affidavit of Default, and the entire matter was submitted directly to me for my summary decision based solely on the record.

The letter alleged, and I now find as fact, that while licensed to do business as a nonresident insurance agent within the State of South Carolina, Potthast received approximately \$5,156.00 in premium payments from a customer and failed to forward those payments to the insurer.

S.C. Code Ann. § 38-43-130 (Supp. 2001) provides: "The director or his designee may revoke or suspend an agent's license after ten day's notice...when it appears that an agent...has willfully deceived or dealt unjustly with the citizens of this State." Subsection (3) of that section goes on to define "deceived or dealt unjustly with the citizens of this State" to include "failing to transmit promptly or pay all or a portion of the amount of an insurance premium when the agent or one of his employees has received payment from a customer or insured or someone on his behalf or when it has been financed by the agent." Moreover, Regulation 69-34.1(E)(m) makes the "failure to report within seven business days the full amount of any premium or partial premium collected from an applicant" an unfair business practice.

In accordance with my findings of fact, and considering Potthast's failure to avail himself of his opportunity to be heard, I now conclude, as a matter of law, that Potthast did receive insurance premiums from a customer and fail to transmit those premiums to the insurer, and that his nonresident insurance agent license should be revoked.

This administrative disciplinary order is a public record subject to the disclosure requirements of the State of South Carolina's, *Freedom of Information Act*, S.C. Code Ann. §§ 30-4-10, *et seq.* (1991 and Supp. 2000). Nothing contained within this administrative disciplinary order should be construed to limit or to deprive any person of any private right of action under the law. Nothing contained within this administrative disciplinary order should be construed to limit, in any manner, the criminal jurisdiction of any law enforcement or judicial officer. Nothing contained within this administrative disciplinary order should be construed to limit the statutory duty, pursuant to S.C. Code Ann. § 38-3-110(3) (Supp. 2001), of the Director of Insurance, exercised either directly or through the Department of Insurance, to "report to the Attorney General or other appropriate law enforcement officials criminal violations of the law relative to the business of insurance or the provisions of this title which he considers necessary to report."

It is, therefore, ordered that Charles R. Potthast's license to transact business as a nonresident insurance agent within the State of South Carolina be, and is hereby, revoked, and no license issued through the State of South Carolina Department of Insurance is to be issued to him.

It is further ordered that a copy of this order shall be transmitted to the National Association of Insurance Commissioners for distribution to its current member states and to each insurer for which Charles R. Potthast is currently licensed, through the State of South Carolina Department of Insurance, as a nonresident insurance agent within the State of South Carolina.

This order becomes effective as of the date of my signature below.

A handwritten signature in black ink, appearing to read "E.N. Csiszar", with a stylized flourish at the end.

Ernst N. Csiszar
Director

22 May 2002, at
Columbia, South Carolina

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Affidavit of Default

Personally appeared before me T. Douglas Concannon, who, being duly sworn, stated that at all times relevant to this Affidavit of Default he was the attorney representing the State of South Carolina Department of Insurance (the Department) in this administrative action. He further stated the following:


The Department served notice on Charles R. Potthast at the address detailed above by a Letter of Allegation and Notice of Opportunity for a Public Hearing that the Department would request the Director of Insurance to summarily revoke his license to act as a nonresident insurance agent within the State of South Carolina in thirty days. The Department served that notice, pursuant to S.C. Code Ann. § 38-3-170 (Supp. 2001), by "depositing it in the United States mail, postage prepaid, addressed to the last known address of the person and registered with the return receipt requested." That letter further notified Charles R. Potthast of his opportunity, within thirty days, to request in writing a public hearing.

The Department mailed the notice concerning the right to a hearing by certified mail, return receipt requested, and by regular mail, on or about March 28, 2002. The United States Postal Service notified Charles R. Potthast of the certified letter on 7, 12, and 22 April 2002. See "Exhibit A" attached. The United States Post Office at Zephyrhills, Florida then returned the certified letter to the Department, having marked it as "Unclaimed." The Notice sent via regular mail was not returned. Charles R. Potthast has made no request for a public hearing or any other response to the notice. The time in which to do so has expired. He is now in default.


T. Douglas Concannon
Associate General Counsel

Sworn to and subscribed before me
this 22 day of May, 2002.

South Carolina Department of Insurance
Post Office Box 100105
Columbia, South Carolina 29202
(803) 737-6132


Steven R. DuBois
Notary Public for the State of South Carolina
My Commission Expires: May 10, 2009